IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1 OF 2006
IN
CONFIRMATION CASE NO. 2 OF 2006
IN
CRIMINAL APPEAL NO. 590 OF 2006

The State of Maharashtra ... Applicant

V/s

Ankush Maruti Shinde & ors. ... Respondents
(Ori.Accd.Nos.1to6)

ALONGWITH

CRIMINAL APPLICATION NO. 2 OF 2006
IN
CONFIRMATION CASE NO. 2 OF 2006
IN
CRIMINAL APPEAL NO. 590 OF 2006

Ankush Maruti Shinde & ors. ... Applicants
(Ori.Accd.Nos.1to6)

V/s

The State of Maharashtra ... Respondent

Mr. S.R. Borulkar, Govt. Pleader with Mr. A.R. Patil, A.P.P. for the applicant in Cri. Application No.1 of 2006 and for the respondent in Cri. Application No.2 of 2006.

Mr. A.P. Mundargi with S.S. Desai for the respondents in Cri. Application No. 1 of 2006 and for the applicants in Cri. Application No. 2 of 2006.

CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED: 14TH NOVEMBER, 2006.

P.C.: 1. When the confirmation case was taken up for

final hearing, it was noticed by the learned Public Prosecutor that the evidence of the Sub-Divisional Magistrate who conducted the test identification parade in relation to accused Nos. 1 to 5 was, inadvertently, not brought on record. He, therefore, filed this Criminal Application No.1 of 2006 praying for permitting the recording of additional evidence to bring the necessary documents on record.

2. At the same time, it was noticed by the learned counsel appearing on behalf of the convicts that one important document Exh.122 which happens to be the previous statement recorded by the police, under the impression that PW-8 who was the injured witness may not survive. The witness was survived and, therefore, what was recorded as dying declaration becomes a previous statement made by the person or witness and can be used under Section 145 of the Evidence Act. Criminal Application No. 2 of 2006 is, therefore, filed on behalf of the accused seeking permission to recall PW-8 so that he can be cross-examined in the light of Exh.122.

3. For the reasons given by the prosecution in their application, Exh.122 was exhibited and taken on record during the examination-in-chief of PW-13 who proved

certain documents. By then the examination in chief and cross-examination of the PW-8 was complete and the witness was discharged. It was undoubtedly true that opportunity for recalling the witness under Section 311 of the Code of Criminal Procedure was available to the defence but inadvertently the defence advocate, then appearing, did not move such application.

4. In this case, therefore, peculiar circumstances have arisen, where both the prosecution and defence, claim permission to lead additional evidence, both on the ground of inadvertent error committed by the prosecution and the defence advocate, at the trial stage. Certain rulings have been pointed out to us at the bar wherein it has been held by the Supreme Court of India that the purpose of provision in the Code of Criminal Procedure for permitting additional evidence at different stages is to permit and empower the Court to reach the truth of the matter and to reveal before the Court all the circumstances necessary for administration of justice in that particular trial. That being the object of the provision, no different standards can be applied for correcting the errors committed by the prosecution or by the defence. The only criterion which, in our opinion, has been consistently laid down by all Courts is that, the additional evidence sought to be led, whether by the

prosecution or by the defence, must be such, as will help the Court to reach the whole truth in the matter.

5. In our opinion, in the present case, bringing on record the report of test identification parade in relation to accused Nos. 1 to 5, is essential for proper adjudication of various points which arise for determination.

6. Similarly, the defence is liable to be given an opportunity to recall and cross-examine PW-8 who was discharged and then PW-13 was examined and Exh.122 came on record. In our opinion, therefore, the interest of justice would be met by allowing both Criminal Application Nos. 1 and 2 of 2006.

7. We, therefore, direct that the III Adhoc Additional Sessions Judge, Nashik would permit both, the prosecution and the defence, to lead additional evidence in relation to the following only :-

(i) The prosecution be allowed to lead additional evidence of the Sub-Divisional Magistrate who conducted the test identification parade in relation to accused Nos. 1 to 5 and all relevant documents

pertaining thereto.

(ii) The defence be permitted to recall and cross-examine PW-8 in relation to Exh.122 which is already on record.

(iii) In the event contradictions are established on record in the cross-examination of PW-8, the learned Trial Judge should also recall PW-13 for directions of those contradictions, if any.

(iv) Since the matter of confirmation is pending, it is desired that the necessary recording of additional evidence be completed before 7th of January, 2007. List the matter for further orders in relation to hearing on 9th January, 2007. The record may be transmitted to the Trial Court for this purpose.

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